

See No 34 for additional brief.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 37

ALMON G. RASQUIN, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE FIRST DISTRICT OF NEW YORK, PETITIONER

vs.

GEORGE ARENTS HUMPHREYS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 27, 1939
CERTIORARI GRANTED MAY 22, 1939

SUPREME COURT OF THE UNITED STATES

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1 In United States Circuit Court of Appeals, Second Circuit

GEORGE ARENTS HUMPHREYS, PLAINTIFF-APPELLEE

vs.

ALMON G. RASQUIN, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE FIRST DISTRICT OF NEW YORK, DEFENDANT-APPELLANT

Statement under rule XIII

This is an appeal from a judgment entered in the office of the Clerk of the United States District Court for the Eastern District of New York on July 14, 1938, and from the order entered in the office of the Clerk of the said Court on July 13, 1938, granting the motion of the plaintiff striking out the answer of the defendant herein, and directing that judgment be entered herein in favor of the plaintiff, pursuant to Rule 113 of the New York Rules of Civil practice.

The action was commenced by the filing of a summons in the office of the Clerk of said District on or about April 12, 1938.

On April 13, 1938, a copy of said summons and complaint was served personally upon the defendant.

On April 26, 1938, a notice of appearance was filed by Harold St. L. O'Dougherty, United States Attorney for the Eastern District of New York on behalf of the defendant.

On June 7, 1938, the answer of the defendant was served upon the plaintiff.

2 On July 6, 1938, plaintiff moved before the Honorable Clarence G. Galston, United States District Judge for the Eastern District of New York, for an order striking out the answer of the defendant herein, and directing that judgment be entered herein in favor of the plaintiff, under the provisions of Rule 113 of the New York Rules of Civil Practice, on the ground that there was no defense to this suit, and for such other and further relief as to the Court would seem just and proper.

On July 13, 1938, an order was entered in the action, granting the plaintiff's motion for summary judgment under Rule 113 of the New York Rules of Civil Practice.

On July 14, 1938, a judgment was filed in the office of the Clerk of the United States District Court for the Eastern District of New York, directing judgment for the plaintiff in the amount of \$11,181.14, with interest thereon from March 12, 1935, together with costs, as taxed, in the sum of \$21.50.

On October 6, 1938, a notice of appeal from the aforementioned judgment was filed in the office of the Clerk of the United States District Court for the Eastern District of New York.

The names of the parties are as given above. There has been no change of parties or attorneys except that Michael F. Walsh, United

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States Attorney for the Eastern District of New York has been substituted in place of Harold St. L. O'Dougherty.

3 In United States District Court, Eastern District of New York

L-7625

GEORGE ARENTS HUMPHREYS, PLAINTIFF

vs.

ALMON G. RASQUIN, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE FIRST DISTRICT OF NEW YORK, DEFENDANT

Notice of appeal to the circuit court of appeals

Notice is hereby given that Almon G. Rasquin, Collector of Internal Revenue of the United States for the First District of New York, defendant above-named, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, from the judgment made and entered in this action on July 14, 1938, and from each and every part of said judgment, as well as from the whole thereof, upon all questions of law and all questions of fact involved therein, and

Take notice further that the said defendant also appeals from and intends to bring up for review the further order of this Court, entered in this action on July 13, 1938, granting the motion of the plaintiff striking out the answer of the defendant herein, and directing that judgment be entered herein in favor of the plaintiff, pursuant to Rule 113 of the New York Rules of Civil Practice.

4 Dated, Brooklyn, New York, October 6, 1938.

(Signed) **MICHAEL F. WALSH,**
United States Attorney.

FRANK J. PARKER,
Asst. U. S. Attorney, Eastern District of New York,
Attorney for Deft.-Appellant,
519 Federal Bldg., Brooklyn, N. Y.

To:

PERCY G. B. GILKES,
Clerk, U. S. District Court,
Eastern Dist. of New York.

CARTER, LEDYARD & MILBURN,
Attys. for Plff.-Appellee,
2 Wall Street, New York, N. Y.

5 In United States District Court, Eastern District of New York

[Title omitted.]

Order appealed from July 13, 1938

The plaintiff in the above-entitled action having made a motion for an order striking out the answer of the defendant herein and

directing that judgment be entered herein in favor of the plaintiff, pursuant to Rule 113 of the New York Rules of Civil Practice.

Now, on reading the complaint, the answer, and on reading and filing plaintiff's notice of motion dated June 29, 1938, returnable July 6, 1938, and admission of service thereof, the affidavit of George Arents Humphreys, sworn to the 24th day of June, 1938, in support of said motion; and the said motion having come on to be heard before Hon. Clarence G. Galston, Judge of the District Court of the United States for the Eastern District of New York, at a Stated Term thereof for motions held at the United States Courthouse, Borough of Brooklyn, City of New York, on the 6th day of July, 1938, and Allin H. Pierce, of counsel, for Carter, Ledyard & Milburn, appearing for the plaintiff, and Frank J. Parker, of counsel, for Michael F. Walsh, Esq., United States Attorney for the Eastern District of New York, appearing for the defendant; and counsel for the defendant having informed the court that the case apparently is controlled by *Hesslein v. Hoey* (C. C. A., 2nd), 91 Fed. (2d) 954, but that the Commissioner of Internal Revenue does not acquiesce therein, it is

Ordered that the plaintiff's motion for summary judgment under Rule 113 of the New York Rules of Civil Practice be, and the same hereby is granted, that the defendant's answer is hereby stricken out, and that judgment is directed for the plaintiff for \$11,181.14, and interest thereon from March 12, 1935, as demanded in the complaint, together with the costs and disbursements of this action.

(Signed) CLARENCE G. GALSTON,
U. S. D. J.

7 In United States District Court, Eastern District of New York

L-7625

Judgment appealed from

The plaintiff having moved this Court for summary judgment in this action pursuant to Rule 113 of the New York Rules of Civil Practice; and said motion having regularly come on to be heard on June 6, 1938; and said motion having been duly granted by an order made by Honorable Clarence G. Galston, United States District Judge, dated July 13, 1938, filed in the office of the Clerk of this Court on July 13, 1938, wherein it was provided that the plaintiff's motion for summary judgment be granted and judgment was directed for the plaintiff in the amount of \$11,181.14 and interest thereon from March 12, 1935; and plaintiff's costs having been duly taxed at \$21.50

Now, on motion of Carter, Ledyard & Milburn, attorneys for the plaintiff, it is

Adjudged that the plaintiff, George Arents Humphreys, of Southampton, Suffolk County, New York, recover of the defendant, Almon G. Rasquin, Collector of Internal Revenue of the United States for the First District of New York, the sum of \$11,181.14, with interest

4 ALMON G. RASQUIN VS. GEORGE ARENTS HUMPHREYS

thereon from March 12, 1935, according to law, together with his costs as taxed in the sum of \$21.50.

Judgment dated this 14 day of July, 1938.

PERCY G. B. GILKES,
Clerk.

By J. G. COCHRAN,
Deputy Clerk.

8 In United States District Court, Eastern District of New York

L—7625

Notice of motion for summary judgment

SIRS: Please take notice that upon the complaint and answer filed herein and upon the annexed affidavit of George Arents Humphreys verified the 24th day of June, 1938, the undersigned will move this Court at a stated term thereof for motions to be held in Room 214 of the United States Court House, Borough of Brooklyn, City of New York, on the 6th day of July, 1938, at 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order striking out the answer of the defendant herein and directing that judgment be entered herein in favor of the plaintiff under the provisions of Rule 113 of the New York Rules of Civil Practice, on the ground that there is no defense to this suit, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, June 29, 1938.

CARTER, LEDYARD & MILBURN,
Attorneys for Plaintiff;
Office and P. O. Address, No. 2 Wall Street,
Borough of Manhattan, New York City.

To:

MICHAEL F. WALSH, ESQ.,
United States Attorney for the Eastern
District of New York,
Attorney for Defendant,
519 Federal Building, Borough of Brooklyn,
City of New York.

9 In United States District Court, Eastern District of New York

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Affidavit of George Arents Humphreys in support of motion for
summary judgment

STATE OF NEW YORK,
County of New York, ss.:

George Arents Humphreys, being duly sworn, deposes and says:
1. I am the plaintiff in the above entitled suit and have knowledge of the facts relating thereto.

2. This suit was commenced by the service of a summons and complaint upon the defendant on April 12, 1938. The defendant served his answer by Michael F. Walsh, his attorney, on June 7, 1938.

3. I believe that there is no defense to this suit and that the answer of the defendant should be stricken out and judgment entered in my favor.

4. This suit is brought to recover an overpayment of gift taxes and interest thereon totalling \$11,181.14 for the year 1934 which I, as plaintiff herein, claim was erroneously paid by me as taxpayer to the defendant acting as Collector of Internal Revenue, and was illegally and improperly collected from me as taxpayer by said defendant.

5. On or about December 27, 1934, I as settlor, and George
10 Arents, Jr., Harold W. Brooks and United States Trust Company of New York, as trustees, executed a certain indenture of trust and on or about the same date I conveyed and delivered to said trustees certain property described in a list attached to said indenture of trust to be held by them upon the trusts in said indenture expressed. A copy of said indenture of trust and a copy of said list of property are jointly attached to the complaint and marked "Exhibit A."

6. On or about March 12, 1935, I duly filed with the defendant as Collector aforesaid a gift tax return for the calendar year 1934 in the form prescribed for use under the Act of Congress approved June 6, 1932, as amended, known as the Gift Tax Act of 1932, and the regulations of the Treasury Department pertaining thereto; and I attached to said return a copy of said indenture of trust and a copy of said list of property which I had conveyed to the trustees as aforesaid. I reported on said return that by reason of the transfer in trust aforesaid, I had made a taxable gift of remainder interests in said trust; that the value of said remainder interests was \$263,201.71; and that a tax in the amount of \$11,181.14 was payable by me in respect of said transfer. A copy of said gift tax return (exclusive of the copy of the trust indenture and list of property thereto attached which are identical with "Exhibit A" aforesaid attached to the complaint) is attached to the complaint and marked "Exhibit B."

7. On or about March 12, 1935, I paid to the defendant as collector aforesaid said sum of \$11,181.14 as a gift tax reported by me
11 as aforesaid on said gift tax return. All of said sum was paid by me and received by said defendant as federal gift tax for the year 1934 on said transfer of property from me to said trustees under said indenture of trust; and no other federal gift tax was due or owing from me for said year.

8. On or about February 17, 1938, I duly filed with the said defendant a claim for refund of said gift tax paid by me for the year 1934 in the amount of \$11,181.14 with interest thereon according to

law. A copy of said claim for refund is attached to the complaint and marked "Exhibit C."

9. On or about March 11, 1938, said claim for refund of gift tax for the year 1934 was wholly rejected and denied by the Commissioner of Internal Revenue as evidenced by a communication to me from D. S. Bliss, Deputy Commissioner of Internal Revenue, dated March 11, 1938, a copy of which is attached to the complaint and marked "Exhibit D."

10. I have made no assignment of the claim constituting the present cause of action. No part of said sum of \$11,181.14 has been refunded; repaid, or credited to me, and the whole thereof with interest thereon according to law remains due and owing from the defendant to me.

GEORGE A. HUMPHREYS.

Sworn to before me this 24 day of June 1938.

WILLIAM C. QUIRK,

Notary Public, Bronx County.

12 In United States District Court, Eastern District of New York

L-7625

Complaint

The plaintiff herein, by Carter, Ledyard & Milburn, his attorneys, complains of the defendant above named, and alleges as follows:

First. At all times hereinafter mentioned the plaintiff was and still is a citizen of the United States and a resident of Southampton, Suffolk County, New York.

Second. On information and belief, at all times hereinafter mentioned the defendant was and still is the Collector of Internal Revenue of the United States for the First District of New York, with his office at No. 271 Washington Street, Brooklyn, New York.

Third. This is a suit of a civil nature at common law which arises under the Constitution and laws of the United States of America providing for internal revenue.

Fourth. On or about December 27, 1934, the plaintiff, as settlor, and George Arents, Jr., Harold W. Brooks, and United States Trust Company of New York, as trustees, executed a certain indenture of trust and on or about the same date plaintiff conveyed and delivered to said trustees certain property described in a
13 list attached to said indenture of trust to be held by them upon the trusts in said indenture expressed. A copy of said indenture of trust and a copy of said list of property are jointly attached hereto, marked Exhibit A, and made a part hereof as though fully set forth herein.

Fifth. On or about March 12, 1935, the plaintiff duly filed with the defendant as collector aforesaid a gift tax return for the calendar

year 1934; in the form prescribed for use under the Act of Congress approved June 6, 1932, as amended, known as the Gift Tax Act of 1932, and the regulations of the Treasury Department pertaining thereto; and the plaintiff attached to said return a copy of said indenture of trust and a copy of said list of the property which he had conveyed to the trustees as aforesaid. The plaintiff reported on said return that, by reason of the transfer in trust aforesaid, he had made a taxable gift of remainder interests in said trust; that the value of said remainder interests was Two hundred sixty-three thousand two hundred one and 71/100 dollars, (\$263,201.71); and that a tax in the amount of Eleven thousand one hundred eighty-one and 14/100 dollars (\$11,181.14) was payable by him in respect of said transfer. A copy of said gift tax return (exclusive of the copy of the trust indenture and list of property thereto attached which are identical with Exhibit A aforesaid) is attached hereto, marked Exhibit B, and made a part hereof as though fully set forth herein.

Sixth. On or about March 12, 1935, the plaintiff paid to the defendant said sum of eleven thousand one hundred eight-one and 14/100 dollars (\$11,181.14), as the gift tax reported by the plaintiff as aforesaid on said gift tax return. All of said sum was paid by the plaintiff and received by the defendant as federal gift tax for the year 1934 on said transfer of property from the plaintiff to said trustees under said indenture of trust; and on other federal gift tax was due or owing from the plaintiff for said year.

Seventh. On information and belief, said sum of eleven thousand one hundred eight-one and 14/100 dollars (\$11,181.14) was erroneously and improperly paid by the plaintiff as taxpayer to the defendant and was illegally and improperly collected by the defendant from the plaintiff, as federal gift tax for the year 1934, for the following reasons:

1. The taxpayer did not make any actual gift by said trust indenture for the reason that he retained in himself not only the beneficial interest in the trust during his life but also the power to alter and amend the trust indenture in such manner as to change the beneficiaries named therein and to prescribe the terms and conditions on which other beneficiaries should take an interest in the trust.

2. Neither the Revenue Act of 1932 nor any other statute of the United States imposes any tax upon transfers or conveyances of property such as those made or purported to have been made by the taxpayer by said trust indenture.

Eighth. On or about February 17, 1938, the plaintiff duly filed with the defendant a claim for refund of said gift tax paid by him for the year 1934 in the amount of eleven thousand one hundred eighty-one and 14/100 dollars (\$11,181.14) with interest thereon according to law. A copy of said claim is attached hereto, marked Exhibit C, and made a part hereof as though fully set forth herein.

15. Ninth. On or about March 11, 1938, said claim for refund of gift tax for the year 1934 (Exhibit C) was wholly rejected and denied by the Commissioner of Internal Revenue, as evidenced by a communication to the plaintiff from D. S. Bliss, Deputy Commissioner of Internal Revenue, dated March 11, 1938, a copy of which is attached hereto, marked Exhibit D, and made a part hereof as though fully set forth herein.

Tenth. The plaintiff has made no assignment of the claim constituting the present cause of action.

Eleventh. No part of said sum of eleven thousand one hundred eighty-one and 14/100 dollars (\$11,181.14) has been refunded, repaid, or credited to the plaintiff, and the whole thereof with interest thereon according to law remains due and owing from the defendant to the plaintiff.

Wherefore plaintiff demands judgment against the defendant in the sum of eleven thousand one hundred eighty-one and 14/100 dollars (\$11,181.14) with interest thereon according to law from March 12, 1935, together with the costs and disbursements of this action.

CARTER, LEDYARD & MILBURN,
Attorneys for Plaintiff,
Office and Post Office Address, No. 2 Wall Street,
Borough of Manhattan, City of New York.

16. [Duly sworn to by George A. Humphreys; jurat omitted in printing.]

17. Exhibit A, annexed to complaint

This indenture made the 27th day of December, 1934, between George Arents Humphreys, residing at Southampton, Suffolk County, New York, (hereinafter called the "Settlor"), and George Arents, Jr., residing at Harrison, Westchester County, New York, Harold W. Brooks, residing at Southampton, Suffolk County, New York, and United States Trust Company of New York, a corporation organized under the Banking Law of the State of New York, having its principal office at 45 Wall Street, Borough of Manhattan, New York City, New York (hereinafter called the "Trustees"):

Whereas, the Settlor desires to create a trust of the property and for the purposes hereinafter mentioned.

Now, therefore, this indenture witnesseth: That in consideration of the premises, the mutual covenants herein contained, and of other good and valuable considerations to him in hand paid at or before the ensembling and delivery of these presents, receipt of which is hereby acknowledged, the Settlor has granted, conveyed, set over, assigned, and delivered, and by these presents does grant, convey, set over, assign, and deliver unto the Trustees, their successors and assigns, the property listed in Schedule A annexed hereto and made a part hereof, hereby agreeing to make, execute and deliver any

further instruments and do and perform any other acts that may be reasonably advisable or necessary in order to vest said property in the Trustees, their successors and assigns.

To have and to hold all and singular the above granted and 18 described property, together with the appurtenances and all the rights of the Settlor thereto, unto the Trustees, their successors and assigns, in trust nevertheless, for and upon the following uses and purposes, and subject to the terms, conditions, powers and agreements hereinafter set forth.

FIRST

To receive, hold, manage, sell, invest, and reinvest the same and every part thereof, in the manner hereinafter specified, and to collect, recover and receive the rents, issues, interest, and income thereof, and after deducting commissions (as hereinafter provided) and the proper and necessary expenses in connection with the administration of the trust, to hold and dispose of the net principal and the net income of the trust as hereinafter directed, namely:

(a) To pay over the net income in quarterly installments to the Settlor until his death.

(b) Upon the death of the Settlor:

(1) To convey, transfer, and pay over one-half of the then corpus of the trust absolutely to George Arents, Jr., of Harrison, New York, or in case he shall die before the Settlor, to his issue per stirpes, or in case neither said George Arents, Jr. nor any issue of his shall survive the Settlor, to the persons who would then correspond to the distributees of the Settlor under the laws of the State of New York if the Settlor had then died intestate leaving him surviving no father and no relative on his father's side and owning said one-half of the corpus of the trust.

19 (2) In case the Settlor's stepfather, Harold W. Brooks, shall survive him, to retain the remaining one-half of the corpus of the trust and to pay over the annual net income therefrom in quarterly installments to the said Harold W. Brooks, until the death of the said Harold W. Brooks, or the death of George Arents, III, of Harrison, New York (whichever event shall first occur), whereupon the trust shall terminate and the Trustees shall thereupon pay over the then remaining corpus to the survivor of the said Harold W. Brooks and the said George Arents, III.

In case, however, the said Harold W. Brooks shall not survive the Settlor, to convey, transfer, and pay over the said remaining one-half of the corpus of the trust absolutely to the said George Arents, III.

If, however, neither the said Harold W. Brooks nor the said George Arents, III, shall survive the Settlor, then to convey, transfer, and pay over the said remaining one-half of the corpus of the trust to the persons who would then correspond to the distributees of the Settlor under the laws of the State of New York if the Settlor had

then died intestate leaving him surviving no father and no relative on his father's side and owning said remaining one-half of the corpus of the trust.

SECOND

(a) Any share of principal which shall, in pursuance of the provisions hereof, become payable to a person who, at the time when payment is herein directed to be made, has not attained the age of twenty-one years, shall vest absolutely in such person and be his or her property, but the Trustees may hold such share and
20 collect the income therefrom, and may in their discretion pay over or apply to the use of such minor, so much of the share of the principal to which such minor is entitled, and of the income thereof, as the Trustees may deem necessary or proper for the support and education of such minor, and when such minor becomes twenty-one years of age, the Trustees shall pay over to him or her the principal of his or her share, or the part thereof then remaining in the hands of the Trustees, together with the unexpended income from such share. If any such minor die before reaching twenty-one years of age, the principal and accumulations shall be paid over to his or her executor or administrator as part of his or her estate. If the provisions of this paragraph "a" shall be attacked, and if it shall be determined that the authority of the Trustees to hold the share of a minor is void for any reason, then the share in question shall be immediately paid over to the guardian of the minor in whom it is vested. The provisions of this paragraph "a" are incidental to the Settlor's plan, and in no event shall it be determined that, by reason of the invalidity of this paragraph, any other provision of this agreement is invalid.

(b) The Trustees may make payment of any income or principal payable to a minor by making such payment, in their discretion, either to the parent or guardian of such minor, or to such minor, and the receipt of such parent or guardian, or of such minor, or evidence of the expenditure of such money for the benefit of such minor, shall be a full and sufficient discharge to said Trustees for any such payment.

(c) No assignment or order by any beneficiary by way of anticipation of any part of the income of the trust herein created shall
21 be valid, but the income shall be paid by the Trustees direct to the person entitled to receive it, or deposited to the beneficiary's account in some bank of good standing and repute without regard to any assignment or order; nor can the principal or income of said trust become attached by trustee process or garnishment or other legal proceeding while in the hands of the Trustees, except to the extent permitted by law.

THIRD

(a) The Trustees are hereby expressly authorized and empowered, in their discretion, to retain the property hereinabove described in the form in which the Trustees receive it from the Settlor.

(b) The Trustees are hereby expressly authorized and empowered, in their discretion, to sell said property, or any part thereof, as well as any property hereafter acquired in trust hereunder and to reinvest the same and the proceeds of the sale thereof in any securities authorized by the Laws of the State of New York for the investment of trust funds and in the bonds or capital stock, of any class, of any corporation in the United States whose bonds or stocks are commonly bought and sold in the city of New York.

(c) Any dividend payable in the stock of the corporation or association declaring or authorizing the same in respect of any stock held by the Trustees shall be treated as principal of the trust estate and retained by the Trustees as such so far as permitted by law. All cash dividends of every kind and nature whatsoever, excepting liquidating dividends, received by the Trustees on any shares of stock held in trust hereunder shall be treated as income.

22. (d) The Trustees are hereby expressly relieved from any obligation to establish any sinking fund in order to restore to the principal of the trust estate any premium on any investments made by the Trustees, and they are expressly forbidden to make any deduction whatever from the income of the trust estate for such purpose.

(e) The Trustees are hereby empowered, in their discretion, to vote in person or by proxy in respect of any shares of stock which at any time may form part of the trust fund hereunder.

(f) The Trustees are hereby authorized, in their discretion, to unite with other owners of similar property in carrying out any plan for the reorganization of any corporation or company whose securities are held by said Trustees; to exchange securities of any such corporation or company for others issued by the same or by any other corporation or company upon such terms as the Trustees shall deem proper; to assent to the consolidation or merger of any corporation or company whose securities are held by the Trustees with any other corporation or company, to the sale or lease by such corporation or company of its property or any portion thereof to any other corporation or company, or to the sale or lease by any other corporation or company of its property or any portion thereof to such corporation or company, and upon such consolidation, merger, sale, lease or similar arrangement, to exchange the securities held by the Trustees for other securities issued in connection with such arrangement; to pay all such assessments, expenses and sums of money as the Trustees may deem expedient for the protection of their interest as holder of the stocks, bonds or other securities of any corporation or company; and generally to exercise in respect of all securities held
23 by the Trustees all the same rights and powers as are or may be lawfully exercised by persons owning similar property in their own right.

(g) The Trustees shall have full power to sell, lease, mortgage, or exchange any real estate forming part of the trust fund, at such times and upon such terms and conditions as they may deem proper,

and to make, execute, and deliver good and sufficient deeds, leases, mortgages, or other instruments affecting the same. The Trustees may lease real estate for any period of time without regard to the duration of the trust, and without authorization by any court.

(h) No purchaser upon any sale by the Trustees shall be bound to see to the application of the purchase money arising therefrom, or to inquire into the validity, expedience, or propriety of any such sale.

FOURTH

Trust investments need not be registered in the names of the Trustees as such, but may be held either in the names of the Trustees as such or in the Trustees' own names without describing the trust or in the name of a nominee of the Corporate Trustee or in bearer form. The holding of investments in any of the forms above described shall neither increase nor decrease the liability of the Trustees.

FIFTH

24 In any case in which the Trustees are required, pursuant to the provisions of this Indenture, to divide the principal of the trust estate into parts or shares, or to distribute the same, or any part thereof, they are authorized and empowered, in their sole discretion, to make such division or distribution in kind or in money, or partly in kind and partly in money, and, for the purpose of such allotment, the judgment of the Trustees concerning the propriety thereof and the relative value for the purpose of division or distribution of the property and securities so allotted shall be binding and conclusive on all persons and corporations interested therein.

SIXTH

The trust hereby created shall be deemed a New York trust and shall in all respects be governed by the Laws of the State of New York.

SEVENTH

This trust is hereby declared to be irrevocable and it shall not at any time, by any person or persons, be capable of modification in any manner, except that the Settlor reserves the right, without the consent of the Trustees or of any beneficiary hereunder, at any time and from time to time during his life, by an instrument or instruments in writing under his hand and duly acknowledged so as to authorize it or them to be recorded in the State of New York, to alter and amend this Trust Deed to the extent of substituting for the beneficiaries named herein other beneficiaries and to prescribe the terms and conditions on which such other beneficiaries shall take an interest in the trust, but the Settlor shall not by any such alteration

or amendment increase his personal beneficial interest in the trust estate.

25

EIGHTH

The Trustees shall render annually to the Settlor and to the other beneficiaries of the trust an account of their transactions under this Indenture.

NINTH

(a) The Corporate Trustee shall be entitled to receive as compensation for its services as such—

(1) A commission of one and one-half per cent. ($1\frac{1}{2}\%$) of the value (computed in the case of securities at market prices) of the principal of the trust received and distributed by the Trustees. Such commission shall be payable out of the principal when and as such principal is paid out by the Trustees.

(2) A commission of two and one-half per cent. ($2\frac{1}{2}\%$) on the first \$20,000 of income received and disbursed by the Trustees in each calendar year and of one and one-half per cent. ($1\frac{1}{2}\%$) on any amount of income in excess of \$20,000 received and disbursed by the Trustees in each such calendar year. The Trustees are hereby authorized to deduct the Corporate Trustee's commission on income and pay it to the Corporate Trustee from time to time before paying the net income to the income beneficiary or beneficiaries hereunder.

The Individual Trustees shall receive no compensation for their services as such.

26 (b) The Trustees are authorized, in the discharge of their duties, to employ counsel and agents and to determine and pay to them reasonable compensation, and they shall also be entitled to reimbursement for the same and for such other expenses and charges as they may deem necessary and proper to incur for the proper discharge of their duties and for the proper management and administration of the trust hereby created.

(c) All such charges and expenses shall be charged against principal or income, as the Trustees may deem proper.

TENTH

Any corporation into which the Corporate Trustee may be merged, or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Corporate Trustee shall be a party, or any corporation which shall otherwise become the lawful successor to the assets and business of the Corporate Trustee as an entirety, or substantially as an entirety, shall be the successor of the Corporate Trustee hereunder, without the execution or filing of any instrument, or any further act, provided such corporation shall be a corporation organized under the Laws of the State of New York or the United States of America.

ELEVENTH

The word "Trustees" as herein used is intended to mean not only the Trustees hereby appointed but also the trustees from time to time acting hereunder, and its or their successor or successors and substitute or substitutes from time to time acting hereunder.

TWELFTH

The Trustees hereby accept the trusts hereby created and covenant that they will faithfully discharge all the duties of their office as such Trustees.

27 In witness whereof, the Settlor and the Individual Trustees have hereunto set their hands and seals, and the Corporate Trustee has caused these Presents to be executed in its name, and its corporate seal to be hereunto affixed, by its officers duly authorized, the day and year first above written.

GEORGE ARENTS HUMPHREYS, [L. S.]
Settlor.

GEORGE ARENTS, JR., [L. S.]

HAROLD W. BROOKS, [L. S.]

UNITED STATES TRUST COMPANY
OF NEW YORK,

By T. H. WILSON, Vice President,
Trustees.

Attest:

H. M. MANSELL, Assistant Secretary.

STATE OF NEW YORK,

County of New York, ss:

On the 27th day of December 1934, before me personally came George Arents Humphreys, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

N. A. MULLINS,

Notary Public, Kings County, N. Y., No. 657.

Cert. Filed in New York Co. No. 657.

New York Co. Reg. No. 5-M-381, Kings Co. Reg. No. 5284.

Commission expires March 30, 1935.

28 STATE OF NEW YORK,

County of New York, ss:

On the 27th day of December 1934, before me personally came George Arents, Jr., to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

N. A. MULLINS,

Notary Public, Kings County, N. Y., No. 657.

Cert. Filed in New York Co. No. 657.

New York Co. Reg. No. 5-M-381, Kings Co. Reg. No. 5284.

Commission expires March 30, 1935.

STATE OF NEW YORK,

County of New York, ss:

On the 27th day of December 1934, before me personally came Harold W. Brooks to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

N. A. MULLINS,

*Notary Public, Kings County, N. Y., No. 657,**Cert. Filed in New York Co. No. 657,**New York Co. Reg. No. 5-M-381, Kings Co. Reg. No. 5284.*

Commission expires March 30, 1935.

29 STATE OF NEW YORK,

County of New York, ss:

On the 27th day of December 1934, before me came Thomas H. Wilson, to me known, who, being by me duly sworn, did depose and say, that he resides in Scarsdale, New York, that he is the Vice President of United States Trust Company of New York, the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument in such corporate seal; that it was so affixed by order of the Board of Trustees of said corporation; and that he signed his name thereto by like order.

N. A. MULLINS,

*Notary Public, Kings County, N. Y., No. 657,**Cert. Filed in New York Co., No. 657,**New York Co. Reg. No. 5-M-381, Kings Co. Reg. No. 5284.*

Commission expires March 30, 1935.

SCHEDULE A

Shares

- 200 Standard Oil Company of California capital stock, no par.
- 200 New Jersey Zinc Company capital stock, par \$25.
- 300 General Motors Corporation common stock, par \$10.
- 100 Continental Can Company common stock, par \$20.
- 100 Allied Chemical & Dye Corporation common stock, no par.
- 30 200 United States Tobacco Company common stock, par \$100.
- 300 Liggett & Myers Tobacco Company common stock "B," par \$25.
- 100 Consolidated Gas Company of New York preferred stock, no par.

Bonds

\$6,000. City of Mount Vernon, N. Y. 4 1/4% Sewerage Bonds, dated June 1, 1927, due June 1, 1942, interest June and December 1st.

Bonds

- \$9,000. City of Mount Vernon, N. Y., $4\frac{1}{4}\%$ Third Street Widening Bonds, dated June 1, 1927, due June 1, 1942, interest June & December 1st.
- 2,000. City of Jersey City, N. J., $4\frac{1}{4}\%$ School Gold Bonds, dated September 3, 1912, due September 3rd, 1962, interest March & September 1st.
- 25,000. City of Cleveland, Ohio, $4\frac{1}{2}\%$ Public Hall Bonds, dated May 1, 1916, due May 1, 1966, interest May and November 1st.
- 25,000. City of New Rochelle, N. Y., 4% Grade Crossing Bonds, due December 1st, 1939, interest May & November 1st, dated December 1, 1909; registered.
- 16,000. Corporate Stock of the City of New York, 4%, due November 1, 1956, interest May & November 1st; registered.
- 1,000. City of Newark, N. J., $4\frac{1}{2}\%$ Market Bond, dated December 15, 1913, due December 15, 1943, interest June and December 15, registered.
- 3,000. City of New Rochelle, N. Y., 4% Sewer Bonds, dated November 1, 1924, due May 1, 1946, interest May & November 1st.
- 31 2,000. City of New Rochelle, N. Y. 4% Sewer Bonds, dated November 1, 1924, due May 1, 1950, interest May & November 1st.
- 2,000. City of New Rochelle, N. Y. 4% Sewer Bonds, dated November 1, 1924, due May 1, 1951, interest May & November 1st.
- 3,000. City of New Rochelle, N. Y. 4% Sewer Bonds, dated November 1, 1924, due May 1, 1952, interest May & November 1st.
- 4,000. City of New Rochelle, N. Y., 4% School Bonds, dated November 1, 1924, due May 1, 1952, interest May & November 1st.
- 16,000. Corporate Stock of the City of New York, $4\frac{1}{4}\%$, due March 1, 1964, interest March & September 1st.
- 10,000. Corporate Stock of the City of New York, 4%, due May 1, 1959, interest May & November 1st.
- 5,000. Corporate Stock of the City of New York, $4\frac{1}{4}\%$, Redeemable after March 1, 1930, due March 1, 1960, interest March & September 1st.
- 10,000. City of Omaha, Nebraska, 5% Gas Plant Purchase Bonds, dated July 1, 1920, due July 1, 1950, interest January and July 1st, with the July 1, 1935 and subsequent coupons attached.
- 3,000. City of Mount Vernon, N. Y. $4\frac{1}{4}\%$ Drainage Bonds, dated July 1, 1927, due June 1, 1942, interest June and December 1st.
- 5,000. Town of Harrison, N. Y. $4\frac{1}{4}\%$ Water Distribution System Bonds, dated June 1, 1927, due June 1, 1965, interest June and December 1st.

Bonds

- 32 \$5,000. Town of Harrison, N. Y. $4\frac{1}{4}\%$ Water Distribution System Bonds, dated June 1, 1927, due June 1, 1963, interest June and December 1st.
- 5,000. Town of Harrison, N. Y. $4\frac{1}{4}\%$ Water Distribution System Bonds, dated June 1, 1927, due June 1, 1961, interest June and December 1st.
- 5,000. Town of Harrison, N. Y. $4\frac{1}{4}\%$ Water Distribution System Bonds, dated June 1, 1927, due June 1, 1959, interest June and December 1st.
- 5,000. Town of Harrison, N. Y. $4\frac{1}{4}\%$ Water Distribution System Bonds, dated June 1, 1927, due June 1, 1957, interest June and December 1st.
- 5,000. Town of Harrison, N. Y. $4\frac{1}{4}\%$ Water Distribution System Bonds, dated June 1, 1927, due June 1, 1955, interest June and December 1st.
- 7,000. County of Bergen, N. J. $4\frac{1}{4}\%$ Road, Bridge & Hospital Bonds, dated December 1, 1927, due December 1, 1936, interest June & December 1st.
- 15,000. State of West Virginia 4% Gold Bonds, dated January 1, 1925, due January 1, 1948, interest January and July 1, with the July 1, 1935 and subsequent coupons attached.
- 10,000. State of West Virginia 4% Gold Bonds, dated April 1, 1923, due April 1, 1944, interest April and October 1st.
- 10,000. State of West Virginia 4% Gold Bonds, dated April 1, 1923, due April 1, 1943, interest April and October 1st.
- 20,000. State of Oregon, Oregon Veterans State Aid $4\frac{1}{4}\%$ Gold Bonds, Series #2, due October 1, 1941, interest April & October 1st.
- 33 25,000. State of North Carolina Building Bond for Educational and Charitable Institutions, $4\frac{1}{2}\%$, dated October 1, 1923, due October 1, 1963, interest April and October 1st. (Temporary.)
- 25,000. Territory of Hawaii 4% Refunding Bonds, Series A, dated May 15, 1916, due May 15, 1946, interest May & November 15th.
- 10,000. Federal Farm Loan Bonds, the Federal Land Bank of Houston, $4\frac{1}{2}\%$, redeemable after January 1, 1933, payable January 1, 1943, interest January and July 1st, with the July 1, 1935, and subsequent coupons attached.
- 25,000. Federal Farm Loan Bonds, the Federal Land Bank of Berkeley, $4\frac{1}{2}\%$, redeemable after January 1, 1933, due January 1, 1943, interest January 1st and July 1st, with the July 1, 1935, and subsequent coupons attached.
- 31,000. County of Westchester, N. Y., $4\frac{1}{4}\%$ County Park Bonds, dated June 1, 1926, due June 1, 1944, interest June and December 1st.
- 2,000. County of Westchester, N. Y., 4% County Park Bonds, dated June 1, 1927, due June 1, 1945, interest June and December 1st.

Bonds

- \$50,000. County of Westchester, N. Y., 4%, County Park Bonds, dated June 1, 1927, due June 1, 1945, interest June and December 1st.
- 1,000. City of Toledo, Ohio, 4½% Boulevard Bond, dated March 1, 1927, due March 1, 1946, interest March & September 1st.
- 34 3,000. City of Toledo, Ohio, 4½% Sewerage Disposal Works Bonds, dated March 1, 1927, due March 1, 1946, interest March and September 1st.
- 85,000. City of Toledo, Ohio, 4½% Intercepting Sewer Bonds, dated March 1, 1927, due March 1, 1946, interest March and September 1st.
- 22,000. City of St. Paul, Minn., 4¼% School Bonds, dated January 1, 1924, due January 1, 1954, interest January and July 1st, with the July 1, 1935 and subsequent coupons attached.
- 12,000. City of St. Paul, Minn., 4½% General Improvement Bonds, dated July 1, 1932, due July 1, 1955, interest January and July 1, with the July 1, 1935, and subsequent coupons attached.
- 5,000. City of St. Paul, Minn., 4½% General Improvement Bonds, dated July 1, 1932, due July 1, 1958, interest January and July 1, with the July 1, 1935, and subsequent coupons attached.
- 20,000. City of Baltimore, Md., 4% Paving Loan, dated April 13, 1911, due August 1, 1951, interest February and August 1st; registered.
- 6,000. City of Albany, N. Y., 4½% School Bonds, Series A, dated May 1, 1932, due May 1, 1964, interest May & November 1st.
- 8,000. City of Albany, N. Y., 4¼% Water Bonds, Series B, dated May 1, 1932, due May 1, 1964, interest May & November 1st.
- 10,000. City of Baltimore, Md., 4% Third Sewer Serial Loan, dated October 1, 1931, due October 1, 1956, interest April and October 1st.
- 35 40,000. City of Buffalo, N. Y., 4 2/10% Refunding Bonds, dated September 1, 1933, due September 1, 1943, interest March and September 1st.
- 16,000. City of Detroit, Mich., 4¼% Markets Refunding Bonds, Series A, dated June 1, 1933, due June 1, 1949, interest June and December 1st; with two coupons due June 1, 1935, attached.
- 1,000. City of Detroit, Mich., 4¼% Public Sewer Refunding Bond, Series A, dated May 15, 1933, due November 15, 1958, interest May and November 15th, with two coupons due May 1, 1935, attached.
- 9,000. City of Detroit, Mich., 4% Public Utility (Water Supply) Bonds, dated December 15, 1925, due December 15, 1955, interest June and December 15th.

Bonds

- \$11,000. City of Newark, N. J. 4% City Railway Construction Bonds, due June 1, 1958, interest June and December 1st. (dated 6/1/31).
- 2,000. City of Newark, N. J. 4% City Railway Construction Bonds, dated June 1, 1931, due June 1, 1969, interest June and December 1st.
- 10,000. City of Minneapolis, Minn., 4% School Bonds, dated May 1, 1911, due May 1, 1941, interest May and November 1st; registered.
- 1,000. City of Minneapolis, Minn., 4% High School Bond, dated November 1, 1913, due November 1, 1939, interest May and November 1st.
- 10,000. City of Minneapolis, Minn., 4% Tax Refund Bonds, dated July 1, 1915, due July 1, 1945, interest January and July 1st, with the July 1, 1935, and subsequent coupons attached.
- 36 24,000. City of Louisville, Ky., 4¼% Refunding Gold Bonds, dated December 1, 1928, due December 1, 1968, interest June and December 1st.
- 4,000. City of Detroit, Mich., 4½% Public Lighting Refunding Bonds, Series A, dated January 1, 1933, due January 1, 1963, interest January and July 1st, with the July 1, 1935 and subsequent coupons attached; & 2 coupons due 1/1/35 attached.
- 4,000. City of Detroit, Mich., 4½% Dock Refunding Bonds, Series A, dated January 15, 1933, due January 15, 1963, interest January and July 15th, with two coupons due January 15, 1935, attached.
- 5,000. City of Detroit, Mich. 4½% Public Sewer Refunding Bonds, Series A, dated February 1, 1933, due February 1, 1963, interest February and August 1st, with two coupons due February 1, 1935, attached.
- 24,000. City of Detroit, Mich. 4¼% Public Utility (Water Supply) Bonds, dated December 15, 1929, due December 15, 1959, interest June and December 15th.
- 16,000. City of Detroit, Mich. 4% Public Sewer Refunding Bonds, Series A, dated May 15, 1933, due May 15, 1956, interest May & November 15th, with two coupons due May 15, 1935 attached.
- 48,000. State of Delaware, State Highway Loan 4% Bonds, dated January 1, 1925, due January 1, 1965, interest January and July 1st, with the July 1, 1935 and subsequent coupons attached.
- 37 10,000. State of Illinois, State Highway 4% Bonds, dated March 1, 1923, due March 1, 1940, interest payable March 1st, annually.
- 15,000. State of Illinois, State Highway 4% Bonds, dated March 1, 1923, due March 1, 1939, interest payable March 1st, annually.

Bonds

- \$7,000. State of Michigan, 4% Refunding Highway Improvement Bonds, dated May 1, 1925, due May 1, 1940, interest May and November 1st.
- 25,000. State of Michigan 4½% Highway Improvement Bonds, dated May 15, 1924, due May 15, 1944, interest May and November 15th.
- 6,000. State of Illinois, State Highway 4% Bonds, dated June 1, 1924, due March 1, 1944, interest March 1st, annually.
- 4,000. State of Illinois, State Highway 4% Bonds, dated March 1, 1923, due March 1, 1943, interest March 1st, annually.
- 15,000. State of Minnesota, 4½% Rural Credit Bonds, dated February 15, 1924, due February 15, 1944, interest February and August 15th.
- 15,000. State of Minnesota, 4% Rural Credit Bonds, dated December 15, 1923, due December 15, 1943, interest June and December 15th.
- 20,000. State of Minnesota, 4½% Rural Credit Bonds, dated June 1, 1924, due June 1, 1954, interest June and December 1st.
- 38 1,000. State of Missouri, 4½% Road Bond, Series U, dated August 1, 1932, due June 1, 1952, interest June and December 1st.
- 10,000. State of Missouri, 4½% Road Bonds, Series I, dated September 1, 1926, due March 1, 1935, interest March and September 1st.

Exhibit B, annexed to complaint

Taxpayer's copy. Detach and retain this copy and the Instructions. Orig. filed 3-12-35.

GIFT TAX RETURN, CALENDAR YEAR 1934

(To be Filed in Duplicate Under the Provisions of the Gift Tax Act of 1932, as Amended.)

Name of donor, George A. Humphreys.

Address, Southampton, Suffolk County, N. Y.

Citizenship, United States.

Residence, Southampton, Suffolk County, N. Y.

Have you (the donor), during the calendar year indicated above, without an adequate and full consideration in money or money's worth, made any transfer exceeding \$5,000 in value (or regardless of value if a future interest) as follows? (Answer "Yes" or "No.")

1. By the creation of an irrevocable trust for the benefit of another. Yes;

2. By making additions to an irrevocable trust previously created for the benefit of another. No;

3. By permitting a beneficiary (other than yourself) to receive the income from a revocable trust, where you possessed the power of

revocation and chose during the year not to exercise it, whether such trust was created before or after the enactment, on June 6, 1932, of the Gift Tax Act of 1932. No;

4. By relinquishing a power to revoke a trust created for the benefit of another. No;

5. By permitting another to withdraw funds from a joint bank account which were deposited by you. No;

6. By irrevocably assigning a life insurance policy, or by naming a beneficiary of a policy without retaining any of the legal incidents of ownership therein. No;

7. By paying a premium under an insurance policy in which you retain none of the legal incidents of ownership and the proceeds of which are payable to a beneficiary other than yourself or your estate. No;

8. By conveying title to another and yourself as joint tenants or to your wife or husband and yourself as tenants by the entirety. No;

9. By any other method, direct or indirect, whereby another received a gift. No.

40 If the answer is "Yes" to any of the foregoing, such transfer should be fully disclosed under schedule A or B.

COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR

1. Amount of gifts for year other than charitable, etc., gifts (item c, schedule A)-----	\$263, 201. 71
2. Amount of charitable, public, and similar gifts for year (item c, schedule B)-----	None
3. Total amount of gifts for year (item 1 plus item 2)-----	263, 201. 71
4. Amount of charitable, public, and similar gifts for year (item c, schedule B)-----	None
5. Specific exemption claimed (not exceeding \$50,000, less total amount of specific exemption claimed for preceding years)---	50, 000. 00
6. Total deductions (item 4 plus item 5)-----	50, 000. 00
7. Amount of net gifts for year (item 3 minus item 6)-----	213, 201. 71

COMPUTATION OF TAX

1. Amount of net gifts for year (item 7, above)-----	\$213, 201. 71
2. Total amount of net gifts for preceding years (item b, schedule C)-----	None
3. Total net gifts (item 1 plus item 2)-----	213, 201. 71
4. Tax computed on item 3-----	11, 181. 14
5. Tax computed on item 2-----	None
6. Tax on net gifts for year (item 4 minus item 5)-----	11, 181. 14

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete

return for the calendar year stated, pursuant to the Gift Tax Act of 1932, as amended, and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer or transfers disclosed herein under schedules A or B was made by me (the donor) during said calendar year. George Humphreys. (Signature of donor/executor.)

Sworn to and subscribed before me this 5 day of March, 1935. William C. Quirk. (Signature and title of officer administering oath.) Notary Public, Bronx County. Bronx Co. Clk's No. 3 (etc.). N. Y. Co. Clk's No. 16 (etc.). [Seal.]

42

AFFIDAVIT

I swear (or affirm) that I prepared this return for the person named herein and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge. James L. Dohr. (Signature of person preparing return.)

Sworn to and subscribed before me this 12th day of March, 1935. Hildur R. Dunham. (Signature and title of officer administering oath.) [Seal.]

43 SCHEDULE A.—GIFTS DURING YEAR OTHER THAN CHARITABLE, PUBLIC, AND SIMILAR GIFTS

Item No.	Description of gift, motive, donee's name and address, and relationship to donor	Date of gift	Value at
			Date of gift
1	Transfer in Trust as per copy of Trust Deed attached and list of property attached thereto.	12-27-34	
	Value of Property, \$1,025,887.56. Present value of Remainders. Trustor's age 21 yrs. 4 mos. 0.25656.		\$263,201.71
	Gift—Trustees—United States Trust Company of New York, 45 Wall Street, N. Y. City. George Arents, Jr., and Harold W. Brooks.		
(a)	Total		263,201.71
(b)	Less total exclusions not exceeding \$5,000 for each donee (except future interest)		
(c)	Included amount of gifts for year other than charitable, etc., gifts		263,201.71

44 SCHEDULE C.—RETURNS, AMOUNTS OF SPECIFIC EXEMPTION, AND NET GIFTS FOR PRECEDING YEARS (SUBSEQUENT TO JUNE 6, 1932)

Calendar Year 1933	Collection district in which prior return was filed	Amount of specific exemption gifts	
		Amount of net exemption gifts	None
(a)	Total amount of specific exemption claimed for preceding years	None	
(b)	Total amount of net gifts for preceding years	None	

Exhibit C, annexed to complaint

CLAIM

To be filed with the Collector where assessment was made or tax paid.

Collector's stamp. (Date received.) Received Feb. 17, 1938.
Collector Int. Rev., 1st Dist. of N. Y.

45 The collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

X Refund of Tax Illegally Collected.

Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

Abatement of Tax Assessed (not applicable to estate or income taxes).

STATE OF NEW YORK,

County of New York, ss:

Type or print—Name of taxpayer or purchaser of stamps: George Arents Humphreys. Business address: 511 Fifth Avenue, New York City. Residence: (Street), (City), Southampton, County, Suffolk, (State), New York.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed—First New York District.
2. Period (if for income tax, make separate form for each taxable year) from—Jan 1, 1934, to Dec. 31, 1934.
- 46 3. Character of assessment or tax—Gift Tax.
4. Amount of assessment,—\$11,181.14; dates of payment—March 12, 1935.
5. Date stamps were purchased from the Government—
6. Amount to be refunded—(exclusive of interest) \$11,181.14.
7. Amount to be abated (not applicable to income or estate taxes)—\$.
8. The time within which this claim may be legally filed expires, under Section—528 (b) (1) of the Revenue Act of 1932, on March 12, 1938.

The deponent verily believes that this claim should be allowed for the following reasons:

(See attached statement)

(Signed) GEORGE A. HUMPHREYS.

Sworn to and subscribed before me this 14 day of February 1938.

[SEAL] William C. Quirk. (Signature of officer administering oath.) Notary Public, Bronx County. Bronx Co. Clk's No. 5, Reg. No. 2Q38. N. Y. Co. Clk's No. 18, Reg. No. 8Q14. Term Expires March 30, 1938.

47 STATEMENT ATTACHED TO CLAIM FOR REFUND, FILED BY GEORGE ARENTS HUMPHREYS, CLAIMING REFUND OF FEDERAL GIFT TAX FOR THE YEAR 1934

Claim hereby is made that on March 12, 1935, there was erroneously paid by and improperly collected from the taxpayer, George Arents Humphreys, the sum of \$11,181.14 as gift tax for the year 1934.

The facts relative to said erroneous payment and collection of tax are as follows:

By indenture of trust dated December 27, 1934, the taxpayer conveyed certain personal property consisting of bonds and shares of stock to trustees to be held by them upon the trusts in said indenture expressed. A copy of said indenture and a schedule of the property conveyed were attached to the taxpayer's gift tax return for 1934 and the same are incorporated herein by reference.

By the First article of said indenture the trustees were directed "To pay over the net income in quarterly installments to the Settlor until his death"; and upon his death to convey one-half of the then corpus of the trust absolutely to certain persons in said indenture mentioned; and to retain the remaining one-half of the corpus in further trust for the benefit of the Settlor's stepfather during a prescribed period and then to convey it absolutely to persons in said indenture described; or in case the taxpayer's stepfather should not survive the Settlor, to distribute the remaining one-half of the corpus absolutely upon the Settlor's death to persons in said indenture described.

48 The Seventh article of said trust indenture provides:

"This trust is hereby declared to be irrevocable and it shall not at any time, by any person or persons, be capable of modification in any manner, except that the Settlor reserves the right, without the consent of the Trustees or of any beneficiary hereunder, at any time and from time to time during his life, by an instrument or instruments in writing under his hand and duly acknowledged so as to authorize it or them to be recorded in the State of New York, to alter and amend this Trust Deed to the extent of substituting for the beneficiaries named herein other beneficiaries and to prescribe the terms and conditions on which such other beneficiaries shall take an interest in the trust, but the Settlor shall not by any such alteration or amendment increase his personal beneficial interest in the trust estate."

On or about March 12, 1935, the taxpayer filed a gift tax return for the year 1934 with the Collector of Internal Revenue for the First New York District, in which he erroneously reported that, by means of the above described trust indenture, he had on December 27, 1934, made gifts of remainder interests in the trust which had a value of \$263,201.71. Also, on or about March 12, 1935, the taxpayer paid to the Collector of Internal Revenue for the First New York

District the sum of \$11,181.14 in payment of the gift tax liability shown on said return.

Claim is hereby made for refund of said sum of \$11,181.14, together with interest thereon from the date of payment, on the following grounds:

49 1. The taxpayer did not make any actual gift by said trust indenture for the reason that he retained in himself not only the beneficial interest in the trust during his life but also the power to alter and amend the trust indenture in such manner as to change the beneficiaries named therein and to prescribe the terms and conditions on which other beneficiaries should take an interest in the trust.

2. Neither the Revenue Act of 1932 nor any other statute of the United States imposes any tax upon transfers or conveyances of property such as those made or purported to have been made by the taxpayer by said trust indenture.

3. The courts of the United States have decided that the creation of a trust, by instrument containing provisions such as those contained in the trust indenture executed by the taxpayer on December 27, 1934, does not constitute, create or effect a "gift" which is taxable under the statutes of the United States. *Hesslein v. Hoey* (S. D. N. Y. 1937) 18 F. Supp. 169, aff'd 91 F. (2d) 954 (C. C. A. 2d, 1937), cert. den. Dec. 6, 1937. See also other authorities referred to in the courts' opinions in said cases.

Wherefore, the taxpayer claims that said sum of \$11,181.14 was improperly collected from him; and that refund of said amount, together with interest thereon from the date of said collection, should be made to him.

50 • *Exhibit D, annexed to complaint*

TREASURY DEPARTMENT,
Washington, Mar. 11, 1938.

Office of Commissioner of Internal Revenue. Address reply to Commissioner of Internal Revenue and refer to MT-ET-GT-247-34-1st New York. Donor—George A. Humphreys.

Mr. GEORGE A. HUMPHREYS,

511 Fifth Avenue, New York, New York.

SIR: Reference is made to your claim, Form 843, filed February 17, 1938, for refund of Federal gift tax in the amount of \$11,181.14 paid for the calendar year 1934.

Your claim is based upon the contention that you did not make any actual gift by the trust agreement dated December 27, 1934, for the reason that you retained not only the beneficial interest in the trust during your life but also the power to alter and amend the trust indenture in such manner as to change the beneficiaries therein and to prescribe the terms and conditions on which other beneficiaries should take in the trust.

Article seventh of the trust agreement provides that the trust is irrevocable and that it shall not at any time be capable of
 51 modification in any manner, except that the settlor reserves the right to alter and amend the trust deed to the extent of substituting for the beneficiaries named therein other beneficiaries but the settlor shall not by any such alteration or amendment increase his personal beneficial interest in the trust estate.

Accordingly, you entirely divested yourself of the right to reinvest yourself with the corpus of the trust and the present worth of the remainder after the termination of your life estate was beyond recall by you.

In this connection, your attention is called to article 3 of Regulations 79 (1936 Edition) relating to gift tax under the Revenue Act of 1932, as amended, and supplemented by the Revenue Acts of 1934 and 1935, which provides in part as follows:

"As to any property, or part or interest therein, of which the donor has so parted with dominion and control as to leave in him no power to cause the beneficial title to be revested in himself, the gift is complete. * * *

It is noted that you refer to the decision in the case of Hesslein v. Hoey. In this connection, you are advised that this office does not consider the decision in the case referred to as a final adjudication of this question and it is understood that eventually a case involving this issue will be taken to the Supreme Court.

Accordingly, your claim for refund is rejected in its entirety.

Respectfully,

GUY T. HELYERING,
Commissioner.

By D. S. BLISS,
Deputy Commissioner.

52 In United States District Court, Eastern District of New York

L-7625

Answer

The defendant, by his attorney, Michael F. Walsh, United States Attorney for the Eastern District of New York, answering the complaint of the plaintiff herein, states and alleges:

First. Denies each and every allegation contained in paragraph "Fifth" of the complaint, except that he admits that on or about March 12, 1935, the plaintiff filed with the defendant as Collector a gift tax return for the calendar year 1934.

Second. Denies each and every allegation contained in paragraph "Sixth" of the complaint except that he admits that on or about March 12, 1935, plaintiff paid to the defendant the sum of Eleven

Thousand, One Hundred Eighty-one and 14/100 Dollars (\$11,181.14).

Third. Denies each and every allegation contained in paragraph "Seventh" of the complaint.

Fourth. Denies each and every allegation contained in paragraph "Eighth" of the complaint, except that he admits that on or about February 17, 1938, the plaintiff filed with the defendant a claim for refund of said gift tax paid by him for the year 1934 in the amount of Eleven Thousand One Hundred Eighty-one and 14/100 Dollars (\$11,181.14), with interest thereon according to law.

53-54 Fifth. Denies that he has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "Tenth" of the complaint.

Sixth. Denies each and every allegation contained in paragraph "Eleventh" of the complaint, except that he admits that no part of said sum of Eleven Thousand, One Hundred Eighty-one and 14/100 Dollars (\$11,181.14) has been refunded, repaid or credited to the plaintiff.

Wherefore, defendant demands judgment dismissing the complaint herein, with costs.

MICHAEL F. WALSH,

United States Attorney, Eastern District of New York,

Attorney for Defendant,

519 Federal Building, Borough of Brooklyn, City of New York.

[Duly sworn to by Almon G. Rasquin; jurat omitted in printing.]

55 In United States District Court, Eastern District of New York

L-7625

Stipulation as to record

It is hereby stipulated and agreed that the foregoing portions of the record and proceedings are hereby designated as the parts thereof to be included in the record on appeal herein, and that the foregoing is a true copy of the transcript of record of the said District Court in the above-entitled matter, as agreed upon by the parties.

Dated, Brooklyn, New York, November —, 1938.

MICHAEL F. WALSH,

United States Attorney,

Eastern District of New York,

Attorney for Defendant-Appellant.

CARTER, LEDYARD & MILBURN,

Attorneys for Plaintiff-Appellee.

56 [Clerk's certificate to foregoing transcript omitted in printing.]

28 ALMON G. RASQUIN VS. GEORGE ARENTS HUMPHREYS

57 In United States Circuit Court of Appeals for the Second
Circuit

No. 205—October Term, 1938

Argued Jan. 13, 1939. Decided Jan. 23, 1939

GEORGE ARENTS HUMPHREYS, PLAINTIFF-APPELLEE

v.

ALMON G. RASQUIN, COLLECTOR OF INTERNAL REVENUE OF THE UNITED
STATES FOR THE FIRST DISTRICT OF NEW YORK, DEFENDANT-
APPELLANT

Appeal from the District Court of the United States for the Eastern
District of New York

Before MANTON, SWAN, and AUGUSTUS N. HAND, Circuit Judges

James W. Morris, Asst. Atty. Gen., Sewall Key and Frederic G.
Rita, Sp. Assts. to Atty. Gen., and Michael F. Walsh, U. S. Atty.,
and Frank J. Parker, Asst. U. S. Atty., both of Brooklyn, N. Y., for
appellant.

Carter, Ledyard & Milburn, of New York City (Sidney W. David-
son and Allin H. Pierce, both of New York City, of counsel), for
plaintiff-appellee.

Opinion

PER CURIAM.

Decision affirmed on the authority of Hesslein v. Hoey, 2 Cir., 91
F. 2d 534.

58 In United States Circuit Court of Appeals, Second Circuit

GEORGE ARENTS HUMPHREYS, PLAINTIFF-APPELLEE

vs.

ALMON G. RASQUIN, COLLECTOR, ETC., DEFENDANT-APPELLANT

Judgment

Filed Feb. 10, 1939

Appeal from the District Court of the United States for the
Eastern District of New York.

This cause came on to be heard on the transcript of record from
the District Court of the United States for the Eastern District of
New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with interest and costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

WM. PARKIN, Clerk.

59 (File endorsement omitted.)

60 [Clerk's certificate to foregoing transcript omitted in printing.]

61 Supreme Court of the United States

Order allowing certiorari

Filed May 22, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument following No. 881, Estate of Charles Henry Sanford, Deceased, et al. vs. Commissioner of Internal Revenue.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] Enter: Attorney General. File No. 43,397. U. S. Circuit Court of Appeals, Second Circuit. Term No. 37. Almon G. Rasquin, Collector of Internal Revenue of the United States for the First District of New York, Petitioner, vs. George Arents Humphreys. Petition for writ of certiorari and exhibit thereto. Filed April 27, 1939. Term No. 37 O. T. 1939.

MICRO CARD

TRADE

MARK



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